

## **UTILITY CONSUMER PARTICIPATION BOARD**

June 2, 2008

### **MINUTES**

A meeting of the Utility Consumer Participation Board was held Monday, June 2, 2008 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

#### **I. Call to Order**

Chairman Alexander Isaac called the meeting to order at 10:16 a.m. Board members present: Ron Rose, Marc Shulman, Sister Monica Kostielney and Alexander Isaac (via telephone conference). Members absent: Harry Trebing (attempted to call-in but unable to connect). Other appearances: Michelle Wilsey, Terri Eklund, Donald Keskey, David Shaltz, Robert Nelson, Jim Ault, Tim Fischer and Darrell Lederle.

#### **II. Agenda**

Kostielney moved, second by Rose and motion carried to approve agenda with the addition of the following items under Correspondences:

- h. Major Actions Summary for February 4, 2008 Regular Meeting (Wilsey)
- i. Supplement to UCPB Financial Report (Shaltz)
- j. AARP Case Status Report dated 5-29-08 (Nelson)
- k. RRC Summary of Results in GCR Plan and Reconciliation Orders Issued by the Michigan Public Service Commission in 2007 (Shaltz)
- l. Requests for additional budget funding or grant transfer/amendments dated 5-30-08 (Keskey)
- m. UCPB MEC/PIRGIM Case Status Report dated 6-2-08 (Keskey)
- n. 2008 UCRF Financial Report as of 6-2-08 (Eklund)

and with the order of New Business items changed as follows: 1. 2009 UCRF Grant Cycle; 2. 2007 UCPB Annual Report; 3. RRC Request for Budget Revision; 4. MEC/PIRGIM, MCAAA Request for Budget Revision.

#### **III. Public Comment**

James Ault, Michigan Electric & Gas Association suggested his comments in the minutes (p.5 last paragraph) be clarified as follows: In regard to removals OF ISSUES FROM RATE FILINGS, the Board should not assume that there is a sinister plot behind every removal.

#### **IV. Minutes**

Rose moved, second by Kostielney and motion carried to approve the minutes of February 4, 2008 with the amendment proposed by Mr. Ault.

#### **V. Correspondences**

The following correspondences were received and placed on file:

- a. AARP Case Status Report 3\_31\_2008
- b. RRC Case Status Report 3\_31\_2008
- c. UCPB Financial Report as of 3\_31\_2008
- d. RRC Case Status Report 5\_28\_08
- e. UCRF 07-01 Request for Budget Revision 6\_2\_2008
- f. Email dated 5\_27\_2008 Notice of Intent to submit UCRF budget revision requests for MEC and/or MCAAA.
- g. UCPB Financial report as of 5\_27\_2008
- h. Major Actions Summary for February 4, 2008 Regular Meeting (Wilsey)

- i. Supplement to UCPB Financial Report (Shaltz)
- j. AARP Case Status Report dated 5-29-08 (Nelson)
- k. RRC Summary of Results in GCR Plan and Reconciliation Orders Issued by the Michigan Public Service Commission in 2007 (Shaltz)
- l. Requests for additional budget funding or grant transfer/amendments dated 5-30-08 (Keskey)
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- n. 2008 UCRF Financial Report as of 6-2-08 (Eklund)

## **VI. Old Business**

a. Billings: Rose thanked Eklund for providing the financial report information to the board in advance of the meeting and for making the modifications to the report that were requested at the February meeting. He noted almost \$590,000 was open for FY08 grants. Eklund stated that \$45,800 is open in FY07 and \$588,000 is open in FY08. Rose questioned why so much is outstanding with the expiration dates of the grants near? Shaltz noted that the RRC 2008 cases had a remaining budget of \$218,160. The attachment provided in the board packet today documented billings through April 30, 2008 of just over \$100,000. He further noted that the grant expires June 30, 2009 not June 30, 2008. The remaining balance will fund the other half of the plan cases and the four remaining reconciliation cases that have not started yet. Rose thanked him for the clarification and correction. He asked Mr. Keskey to address the cases that expire in September 2008. He noted that MI Environmental Counsel has billed \$111,000 with \$176,000 remaining. Keskey noted that they had submitted an invoice through April. DLEG had questions on the invoice which were answered, however, he assumed it had not been through the payment process yet. The May time is in internal processing and an invoice will be completed once the review and any corrections are made. He estimated the balance of grant 08-01 to be approximately \$80,000 at present. Rose recalled the board asking to bring the billings more current – 30 days behind the closing of the month. Wilsey noted the board did not adopt a particular policy but inquired at the last meeting what DLEG's policy was and/or what the contract called for in regard to billings. Eklund spoke with Droste regarding this matter and Droste noted that DLEG did not have penalties for late billings or anything along that line. Rose noted that he had asked Liskey to look at the same issue. Keskey commented that he was working on a spreadsheet to provide current billing information to the Board. Rose asked if Keskey's billing process could be "plugged" into DLEG Finance and Wilsey so the board could have current information or would that present a confidentiality problem? Keskey replied the spreadsheet would be his preferred approach. Rose noted that he was not seeking penalties but felt that current billing information should be provided if a grantee is seeking a budget amendment. Keskey noted that sometimes case schedules are extended from what was originally planned. Therefore, the September 30, 2008 deadline of the grant does not necessarily match the case schedule and work load. The budget has to be stretched out to meet the needs – both planned and unplanned. Nelson noted he would have to review the billings. Rose suggested that in months that no work was done, a "nothing billed this month" communication could be submitted. Kostielney commented that Department of Management and Budget would have some physical protocols and financial procedures for grants. She noted it was burdensome and inefficient for every vendor to design his/her own program for fiscal protocol. She queried as to whether State forms, systems, and policies exist that are applied to these types of grants? Shaltz noted that all of the grantees use a uniform, universal billing form from DLEG. Current contracts with the grantees provide for quarterly billing or quarterly reports. The board can ask for more frequent billings or modify the contract. Isaac asked if the forms were submitted more frequently, would payment be made more frequently than quarterly? Shaltz replied that he felt DLEG would process payments more often than quarterly if invoices were submitted more frequently, he was just stating what the contract provides. Nelson and Keskey were using the State forms. Keskey explained the internal software invoicing system used by his firm. He noted, they are trying to produce a spreadsheet that will report the status of invoicing for each case. Wilsey noted that Eklund would have the invoices processed, and Keskey's

spreadsheet would allow the board to determine the amount submitted for approval to determine more accurate “estimated” expenditures. Isaac noted that the form was irrelevant unless the data is entered into it. The board simply wants to know more about the activities of invoices and status of payments at least quarterly and particularly when budget requests/amendments are made. Rose concurred noting that he would like them at least a week to ten days prior to the meeting. Liskey asked Rose if he wanted the AG to develop language that would require monthly billings. Rose said to first address with DLEG whether they can use that procedure. If so, then he would like something that is not punitive but that provides that the board be kept properly informed.

## **VII. New Business**

a. 2009 UCRF Grant Cycle – Wilsey presented the draft announcement for FY 2009 (noting the table of contents required further editing). She noted that the requested appropriation was \$950,000 with the amount available for grants being \$902,000. DLEG will circulate the announcement and post it on the UCRF web site. Wilsey has provided Bennett with contact information for additional prospective grantees. She recommended August 8, 2008 as a deadline for submission and that a special meeting of the board for purposes of grant review be scheduled at the end of August. She wanted to provide sufficient time for DLEG to process any grants awarded on that date for submission to the State Administrative Board. Some grants may need to be in place by October 1, 2008. Ad Board scheduling was discussed. Droste was not available to comment on the schedule. **Rose moved, second by Kostielney and motion carried to schedule a special meeting on Monday, August 25, 2008, 10:00 a.m. for the purpose of reviewing FY 2009 UCRF grant submissions.** Liskey asked if canceling the August 4, 2008 regular meeting was part of the motion. Rose asked if that should be considered? Isaac noted that the April meeting was cancelled and that it is necessary to hold the regular August meeting. Wilsey asked for direction to grantees regarding preparation of grant requests in regard to funding of existing cases. She asked whether grantees should ask for extensions or new funding for cases that extend beyond the planned grant year? She recalled the pancaking issue related to an extension request by Keskey. Kostielney suggested possibly extending the grant cycle to two or three years so that extensions are not continually needed. Eklund noted she could not speak for Droste but some grants were done in phases. They could look into whether that would be applicable in some instances. Keskey noted that the board used to approve 18 month grants. That accommodated more, but not all, case schedules. Keskey noted flexibility through extensions or some other mechanism is necessary in order to do the work when it is required. He also noted that the requirement to have exact budgets for each case is very difficult. Budget transfers and requests are needed. He would like to see more flexibility to transfer money between case budgets and from legal and expert line items. Kostielney agreed some additional flexibility was needed. Rose asked about the possibility of encumbering the funds that are granted for up to three years. Wilsey noted that these are important issues but her specific question was whether the board wanted to advise grantees that they should not plan to have a single case funded from more than one “open” grant. Isaac noted that since funds do not “disappear” but revert to the fund for future appropriation, this problem is artificial. There is no need to “overlap” to preserve funds. Wilsey noted that the contract allows 5% administrative transfers. The board has successfully administered budget amendments for transfers greater than 5%. This has improved transparency and oversight. Rose asked if the board ever had more grants than available funding? Wilsey noted that it had occurred and the appropriation request was increased the following year. Kostielney commented that the board simply had to consider the requests in batches. She proposed looking at on-going cases first and then new grants. The board exercises discretion and lives with its decisions. Shulman commented that the board should look at the entirety of the request for funding at one time. Some funding may lapse but it will be available in the future. He does not want to pursue two paths that may be duplicative in nature. He feels it is better budgeting practice to review all requests at the same time. If a grantee needs an extension, the board is able to review it and grant it if merited. Extending grants two or three years or longer reduces accountability and oversight. Shultz cautioned the board from setting aside a portion of funding to deal

with supplements to existing grants. The grant application specifies cases that are eligible for grants. The whole idea of the program is to provide participation in annual GCR and PSCR filings at the MPSC. The board could indicate that if funding is left over from the current year, grantees could file for supplemental grant funding requests prior to the close of that grant year. Rose suggested that the board look at two items at the special meeting on August 25 – supplemental funding for FY08 and new grants for FY09. Kostielney noted that the board considers the allocation of funds but does not dictate the request for funds. She felt the board should not judge the merits of the requests until they see what comes in. Isaac asked Wilsey to discuss this issue further with DLEG and bring forward a specific proposal for the board.

b. 2007 Annual Report – Wilsey requested that grantees submit information for the 2007 annual report.

c. RRC request for budget revision (UCRF 07-01) – Shaltz presented a request to reallocate funding from the Michigan Consolidated Gas Company reconciliation case to the Consumers Energy reconciliation case. A settlement was reached in the MichCon case reducing the planned budget. The Consumer's energy case was fully litigated. The decision from the Administrative Law Judge adopted our proposed disallowances. **Motion by Kostielney, second by Rose and motion carried to approve the budget amendment to UCRF 07-01 for case U-14716-R, increase legal budget from \$13,125 to \$19,250, increase expert budget from 13,125 to \$19,250 and increase 1% administrative budget from \$262 to \$385 and for case U-14717-R, decrease legal budget from \$13,125 to \$7875, decrease legal budget from \$13,125 to \$6,125, and decrease administrative budget from \$262.5 to \$140.**

d. MEC/PIRGIM, MCAAA request for budget revisions – The first item deals with preparation of the Supreme Court brief. The first request of \$20,000 is based on the estimate for printing and postage for the cert brief, appendix and related statutory materials. Actual costs will be billed – no overhead or adders. **Motion by Rose, second by Kostielney and motion carried to approve a budget amendment to increase the budget for UCRF 08-01, Case U-13919 Appeal (IM Power) by \$20,000.**

The next request is in regard to Consumer's Energy "Balanced Energy Initiative". The increased budget of \$25,000 would provide funds to hire an expert consultant to more fully examine Consumer's Energy's forecasts and their plans on how to meet those forecasts and to take a heightened posture in the case. The schedule for the case will not be set until June 9<sup>th</sup>, so the second request is for an immediate transfer of \$3,000 from expert to legal in the existing budget to address the immediate needs of the case. Wilsey asked if the total expert amount after the transfer of \$3,000 to legal would be \$26,000. Keskey replied that was correct. Shulman asked why the budget for the expert was so much different than the amount originally requested. He further asked how necessary is the expert right now in order to prevail on ratepayer issues in this case. The original \$4,000 expert budget was to participate but at a much lower key than currently proposed. This expert budget is within the range of expert budgets for many other cases. What more is potentially gained for ratepayers for participation at this higher level than what was anticipated at the planned level of participation? The most recent load and sales forecast show far less load demand than what they have been claiming. In fact there is an SCC 10K report indicating that Consumers will actually lose load this year. In the Balanced Energy Initiative, proposals for new coal plants, sources of supply, timelines needed for supply, et. cetera are all affected by the load and sales forecasts. We would assert there is time to improve planning of these plant additions and better technology. An expert analysis would bring a different viewpoint and more credibility to the arguments. An expert witness would strengthen the case. Shulman asked if Keskey had a contract or a particular expert in mind. Keskey said he had estimates but no hiring decision had been made. Shulman noted that he did not dispute the use of an expert if it strengthened the case on behalf of ratepayers. He was concerned however that approving \$25,000 for an expert without knowing what the cost of the expert actually will be was inappropriate. He suggested perhaps approving that as a cap with the board having final approval over the actual approved contract amount. Isaac noted that was one option and another one was to table this part of the request. Isaac asked for a positive motion. **Motion by Rose, second by Kostielney and motion failed to approve a budget amendment to increase the budget for UCRF 08-**

**01, Case U-15290 CECO's "Balanced Energy Initiative" in the total amount of \$35,350 (\$25,000 expert, 10,000 legal and \$350 admin).** Keskey asked if the transfer of \$3,000 from expert to legal in the existing budget was approved. **Motion by Rose, second by Kostielney and motion carried to approve a budget amendment for UCRF 08-01, Case U-15290 CECO's "Balanced Energy Initiative" to transfer \$3,000 from the expert budget to the legal budget.**

The third request was to transfer \$5,000 from the expert budget to the legal budget in case U-15415. Keskey noted that hearings were now completed and they were awaiting a proposed final decision. The remaining work is legal in nature, not expert. The legal budget is fully expended. Therefore, he would like to transfer \$5,000 of the unspent expert funds to legal in order to complete work on the case. Shulman expressed some concern that a pattern of transfer was developing and that additional efforts to budget more accurately should be made. Rose noted that the board did not expect pro-bono work but rather reasonable accounting and notice of budget constraints prior to the work being done. Liskey noted that the board can authorize payment of money for retroactive services. Keskey noted that the budget request is for work that will be done in the future. Wilsey commented that Keskey's request was written and orally presented for prospective work. It appeared to be a proper request. Keskey reiterated the request was for prospective work only. **Motion by Rose, second by Shulman and motion carried to approve a budget amendment for UCRF 08-01, Case U-15415 CECO's PSCR Plan Case 2008 to transfer \$5,000 from expert budget to legal budget for prospective work on the case.**

Kostielney left the meeting.

The fourth request was to increase the budget for the Detroit Edison Rate Case U- 15244 by \$15,150. Keskey explained that the request resulted from Detroit Edison substantially amending their case a few months ago and presents a better estimate, based on their experience in the Consumers Energy Rate Case, of what a reasonable presentation would cost. This case directly affects Act 304 costs and will set the stage for years to come. Rose asked if the scope of the case had increased from what was initially filed? Keskey noted that the rate case was filed earlier this year and major amendments were made a few months ago making the case more complex. Rose asked how much of the original budget had been spent. Keskey responded that spending was limited to date but there was a small budget to start with. The case's significance has increased and the budget planning presented is more realistic. Rose asked if Keskey felt this was a watershed issue that his client desired that ratepayers be heard on. Keskey responded affirmatively. Shulman asked Keskey if the amendment was not approved, would the client stop work on the case. Keskey replied no, they would continue to do as much as they could with the funding granted. His concern was it would dilute their effectiveness. Shulman asked if he saw this as the last request for additional funding for participation in the case or was their potential to request additional funding? Keskey noted that he did not plan to ask for additional funds but could not predict needs arising from unforeseen circumstances. Wilsey noted that they had limited success on these issues in the past and asked what distinct approach or new strategy convinced him that they had opportunity for success in this case? Keskey noted that they had some success in the past and there are some unresolved issues on appeal. In this case, the utility itself had proposed some energy efficiency proposals, and the opportunity is to improve them and suggest changes to the program. Wilsey asked if Liskey had any comments on the matter. He would follow up with the attorney they had on the case. Rose invited utility representative to comment on the proposed participation in the case. He noted that these cases and efforts are building blocks. It sets up adversarial proceedings and allows parties to present their evidence and test their theories. **Motion by Rose, second by Shulman and motion carried to approve a budget amendment for UCRF 08-01, Case U-15244 DECO Rate Case to increase the budget by a total \$15,150 (\$10,000 legal, \$5,000 expert, and \$150 admin).**

Five minute recess.

Isaac called the meeting back to order. Shulman advised that he had a meeting that he had to break for at 1:00 p.m. Keskey explained the MichCon request was either a request for additional funds or a transfer from an existing budget in the amount of \$5,000 to prepare a brief in the Court of Appeals plus \$50 administrative fee. He noted that the request could be reduced to \$3,000 because the oral argument in this case would not occur in this grant year. Keskey suggested that if the board did not want to grant additional funds then the amount could be transferred out of the CECo case. Shulman questioned whether the benefit and likelihood of prevailing on the appeal merited the additional expenditure. Keskey said they were trying to defend a downward rate adjustment. If successful it will be a permanent savings to ratepayers in the amount of \$7-15 million. **Motion by Rose, second by Shulman and motion carried to add case Michigan Consolidated Gas v. MPSC, et. al, Court of appeals Docket No. 282741 to UCRF 08-03 and approve a budget amendment for MEC/PIRGIM UCRF 08-01 to transfer \$5,050 (\$2,500 legal, \$2,500 expert, and \$50 admin.) from Case U-15454 CECO GCR Plan Case to MCAAA UCRF 08-03 Case Michigan Consolidated Gas v. MPSC, et. al, Court of appeals Docket No. 282741.**

Keskey presented the next budget amendment request related to a new Consumers Energy gas rate case that started a few months ago. It is a case in which the company is proposing a decoupling rate design which will provide a more aggressive mechanism for energy efficiency and conservation. The gas commodity will stand-alone, thereby reducing the disincentive for conservation due to loss of sales. It is a transformational case as it may be the means by which the utilities get interested in energy efficiency. On the other hand, there may be mechanisms other than (or in coordination with) decoupling needed to ensure that the company pursues productivity gains and ratepayers are not paying with a blank check. This request therefore is related to the energy efficiency issues that have been of interest in four cases in which the Commission has said rate design to provide energy efficiency is a valid Act 304 issue. Whenever you can stop the waste of gas you can affect the gas cost of customers as well as the demand curve. This request is to add the case and approve a budget of \$40,400 (\$25,000 legal, \$15,000 expert, and \$400 admin) as a means to assemble a case and file by August 25<sup>th</sup>. Rose asked if the request is for prospective work? Keskey replied that it was. Rose asked if the board had already approved the intervention under any other grant. Keskey replied that they had not. Keskey noted his request was to allow them to file to intervene by the deadline. Wilsey asked Keskey on what basis he felt these were appropriate Act 304 issues. Keskey noted that in U-14701 and U-14702, the Commission decided that these were valid Act 304 cases. Now the utility is putting the issues in a gas rate case but they are still rate design issues involving energy efficiency. **Motion by Rose, second by Shulman and motion carried to add case U-15506 to UCRF 08-03 and approve a budget in the amount of \$40,400 (\$25,000 legal, \$15,000 expert, and \$400 admin).** (Note: Shulman stepped away briefly when the vote was called but voted affirmatively when he returned to the meeting).

Keskey explained the last budget request was to prevent a funding gap from occurring. MichCon and Consumers will be filing their new reconciliation cases on or before June 30, 2008. He could fund intervention from existing budgets but he did not have a case number or budget sheet prepared for the case. Rose asked if Keskey if this was approved under the grant and he just needed to establish the specific budget and provide a case number then he should take care of that with DLEG administration. Wilsey asked if it had in fact already been approved or was this a new case he wanted to add to the grant? Keskey said the board had approved GCR cases for MichCon and Consumers. They had attached that funding on the budget sheets to the Plan cases but the reconciliation cases are coming and he would like to shift some of the remaining funding to the Reconciliation cases. Rose suggested he shift 5% administratively and any further request be brought to the board at the regular meeting on August 4. Wilsey asked why they did not anticipate the need for funding intervention as the cases are always scheduled to be filed in June? Keskey noted that they consider putting that in the new grant but work needs to begin prior to that approval. Rose asked if they had money remaining in a different category of cases. Keskey replied that they had money left in their budgets for appeals. Keskey said they had approved budgets for "GCR cases for Consumers and MichCon and appeals therefrom". Rose said since the subject matter is there, then 5% can be shifted for intervention needed prior to the next board meeting. Wilsey concurred that if the grant is written as Keskey presented, he could exercise the 5% transfer

allowance that the contract provides. Keskey said he would pursue an administrative request for 5% transfer of funds for the initial discovery.

Shulman returned to the meeting and clarified his affirmative vote on the motion he supported to add case U-15506 to UCRF 08-03 and approve a budget in the amount of \$40,400 (\$25,000 legal, \$15,000 expert, and \$400 admin). Isaac asked Liskey to clarify legal voting and quorum, particularly as related to the issue of whether someone's "support" of a motion constitutes an affirmative vote.

#### **VIII. Next Meeting**

The next meeting is scheduled August 4, 2008, 10:00 a.m., Ottawa Building, 4<sup>th</sup> Floor Training Room

#### **IX. Adjournment**

The meeting adjourned at 1:00 p.m.

*Note: Full transcripts of this meeting are available upon request.*